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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/965,113

09/26/2001

Peter Yau Tak Lin

8258X

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05/13/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,113

Applicant(s)

LIN ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 13-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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Applicant's election without traverse of Group I claims 1-12 in the response filed 2/27/04 is acknowledged.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-9 are rejected under 35 U.S.C. 102(a) as being anticipated by Villagran et al (WO 99/20125).

For claim 1, Villagran et al disclose an emulsifier system comprising polyglycerol ester having a polyglycerol backbone of from 2 to about 10 glycerol units wherein not more than about 40% of the hydroxyl groups of the polyglycerol are esterified with fatty acids. The emulsifier system is used in dough compositions containing dehydrated starch ingredients (page 3 lines 1-22). For claims 2-3, Villagran et al disclose 2 to about 10 glycerol units; they do not disclose the percentage which means all the PGE have a polyglycerol backbone of 2-10 and the claimed " at least about 80%" includes all. For claim 4, Villagran disclose from about 20-35% of the hydroxyl are esterified (page 12 lines 4-8). For claims 5-6, 8, Villagran et al disclose the emulsifier system wherein at about 80% of the ester groups are derived from saturated fatty acid (page 12 line 7-8). Villagran et al disclose the hydroxyl groups are esterified with myristic acid, palmitic acid, stearic acid or mixture thereof. These are the fatty acids in claim 8; Villagran et al do not disclose any other esterified component; thus, all the ester groups are from fatty acid and at least 80% includes 100%. For claim 7, Villagran et al disclose the emulsifier

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system contains not more than about 15% free polyglycerol (page 12 line 2). Villagran et al disclose about 5-25%; this range includes amount that is not more than about 15%. For claim 9, Villagran et al disclose the emulsifier system further comprises monoglyceride (page 10 line 13).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villagran et al.

Villagran et al do not disclose adding lecithin and the amount of polyglycerol ester as claimed.

Polyglycerol ester, lecithin and monoglyceride are all well known emulsifiers. It would have been obvious to use all three emulsifiers in the emulsifier system depending on the properties wanted and the product being made. One skilled in the art can readily determine which emulsifier or combination of emulsifiers work best in a particular food

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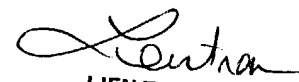
product through routine experimentation with different emulsifiers to find the optimum combination. It would also have been obvious to determine through routine experimentation to find the optimum ranges. Applicant has not shown any unexpected result or criticality with respect the claimed amounts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-271-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 12, 2004


LIEN TRAN
PRIMARY EXAMINER
